

ELECTRONICALLY FILED  
February 13, 2007

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Counsel for the Official Committee Of  
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:	)	BK-S-06-10725-LBR
USA COMMERCIAL MORTGAGE COMPANY,	)	Chapter 11
Debtor.	)	
In re:	)	BK-S-06-10726-LBR
USA CAPITAL REALTY ADVISORS, LLC,	)	Chapter 11
Debtor.	)	
In re:	)	BK-S-06-10727-LBR
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC,	)	Chapter 11
Debtor.	)	
In re:	)	BK-S-06-10728-LBR
USA CAPITAL FIRST TRUST DEED FUND, LLC,	)	Chapter 11
Debtor.	)	
In re:	)	BK-S-06-10729-LBR
USA SECURITIES, LLC,	)	Chapter 11
Debtor.	)	

**Affects**

- ☐ All Debtors  
☒ USA Commercial Mortgage Co.  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☐ USA Capital Diversified Trust Deed  
☒ USA First Trust Deed Fund, LLC

Date: March 15, 2007  
Time: 9:30 a.m.

**FIFTH OMNIBUS OBJECTION OF THE OFFICIAL COMMITTEE OF EQUITY  
SECURITY HOLDERS OF USA CAPITAL FIRST TRUST DEED FUND, LLC –  
MISFILED CLAIMS (AFFECTS DEBTORS USA COMMERCIAL MORTGAGE  
COMPANY AND USA CAPITAL FIRST TRUST DEED FUND, LLC)**

1           The Official Committee of Equity Security Holders of USA Capital First Trust  
 2 Deed Fund, LLC (the "FTDF Committee"), hereby submits this "Fifth Omnibus Objection Of The  
 3 Official Committee Of Equity Security Holders Of USA Capital First Trust Deed Fund, LLC –  
 4 Misfiled Claims" (the "Objection"), pursuant to which the FTDF Committee objects to the proofs  
 5 of claim referenced herein (the "Wrong Debtor Claims") on the grounds that they have been  
 6 erroneously filed against the USA Capital First Trust Deed Fund, LLC ( the "FTDF") and that the  
 7 FTDF has no liability on account of such claims. Where claimants who filed the Wrong Debtor  
 8 Claims (the "Claimants") did not also file proofs of claim against USA Commercial Mortgage  
 9 Company ("USACM"), the FTDF Committee request that the Court reclassify without prejudice  
 10 the Wrong Debtor Claims of such Claimants as claims against USACM such that USACM's right  
 11 to object to such claims are reserved. With respect to those Claimants who filed a proof of claim  
 12 against USACM in addition to a Wrong Debtor Claim, the FTDF Committee requests that the  
 13 Wrong Debtor Claims of such Claimants be disallowed in full. By this Objection, the FTDF  
 14 Committee does not seek to prejudice the rights of any of the Claimants to recover from other  
 15 Debtors in the Chapter 11 Cases on account of liabilities asserted in the Wrong Debtor Claims.

16           This Objection is made pursuant to section 502 of title 11 of the United States  
 17 Code (the "Bankruptcy Code"), Rule 3007 of the Federal Rules of Bankruptcy Procedure  
 18 ("Bankruptcy Rules"), and Rule 3007 of the Local Rules of Bankruptcy Practice (the "Local  
 19 Rules") and is based upon the points and authorities which follow, Exhibit "1" attached hereto,  
 20 the "Declaration of Matthew Kvarda" (the "Kvarda Declaration") filed in support hereof, the  
 21 pleadings referenced by docket number herein, judicial notice of which is respectfully requested,  
 22 and any oral argument of counsel to be presented at the time of the hearing on this Objection.

23           Based on the foregoing, the FTDF Committee request that the Court enter an  
 24 order (i) sustaining the Objection; (ii) disallowing each Wrong Debtor Claim, in its entirety, as  
 25 filed against the FTDF, where a Claimant also filed a proof of claim against USACM on account  
 26 of the claim alleged in such Claimant's Wrong Debtor Claim; (iii) reclassifying without prejudice  
 27 each Wrong Debtor Claim filed against the FTDF as a claim against USACM where a Claimant  
 28 did not file a proof of Claim against USACM on account of the claim alleged in such Claimant's

1 Wrong Debtor Claim; and (iv) granting such other and further relief as the Court deems just and  
2 proper.

3 Respectfully submitted this 13<sup>th</sup> day of February 13, 2007.

4  
5 STUTMAN, TREISTER & GLATT

6 /s/ Andrew M. Parlen

7 ANDREW M. PARLEN, ESQ.

8 Professional Corporation

9 Counsel to the Official Committee of Equity

10 Security Holders of USA Capital First Trust Deed  
11 Fund, LLC

12 and

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21 Fund, LLC  
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**POINTS AND AUTHORITIES**

**I. STATEMENT OF FACTS**

**A. General Background**

1. On April 13, 2006 (the "Petition Date"), USA Commercial Mortgage Company ("USACM"), USA Securities, LLC ("USA Securities"), USA Capital Realty Advisors, LLC ("USA Realty"), USA Capital Diversified Trust Deed Fund, LLC (the "DTDF"), and the FTDF (collectively with USA Mortgage, USA Securities, USA Realty, and the DTDF, the "Debtors") filed voluntary petitions for relief under chapter 11 the Bankruptcy Code.

2. Thereafter, on May 9, 2006, this Court entered its Order Regarding Joint Administration Without Substantive Consolidation [docket no. 184] whereby the Court ordered that the Chapter 11 Cases be jointly administered under the name of USA Commercial Mortgage Company, bankruptcy case number BK-S-06-10725-LBR.

3. On May 10, 2006, the Office of the United States Trustee (the "U.S. Trustee") appointed four separate committees in these Chapter 11 Cases, including the FTDF Committee.

4. The FTDF Committee represents the interests of those persons who invested in the FTDF (the "FTDF Members"). FTDF Members hold equity, or membership, interests in the FTDF.

5. On June 15, 2006, each of the Debtors filed their "Summary of Schedules and Statement of Financial Affairs" (collectively, the "Schedules") pursuant to Bankruptcy Code section 521(a)(1)(B), based upon their books and records as of the Petition Date.

6. On September 14, 2006, the Court entered its Order Setting Deadline to File Proofs of Claim and Proofs of Interest [Docket No. 1280] setting the deadline of November 13, 2006, to file proofs of claim and proofs of interest in the Chapter 11 Cases.

7. On or about September 18, 2006, the Debtors mailed proof of claim and proof of interest forms, together with instructions explaining that (i) if any equity interest holder (such as a FTDF Member) wished to assert a claim (as opposed to an equity interest) against any

1 of the Debtors, then that equity holder must file a proof of claim but that proofs of claim should  
2 only be filed in those instances where the claimant believed one of the Debtors owed the  
3 claimant monies for such things as damages, rescission, reimbursement or contribution; and (ii)  
4 if the equity interest holder had no disagreement with the amount indicated on the proof of  
5 interest form included in the mailing, then that equity interest holder need take no action and his  
6 or her proof of interest in the FTDF would be deemed allowed in the amount shown on the proof  
7 of interest form.

8           8.       On November 15, 2006, the Debtors filed the "Debtors Third Amended  
9 Joint Chapter 11 Plan Of Reorganization" (the "Plan"). Thereafter, at a hearing held on  
10 December 20, 2006, the Court orally confirmed the Plan, and on January 8, 2007, the court  
11 entered an order confirming the Plan [docket no. 2376].

12 **B.     The Debtors' Businesses**

13           9.       As of the Petition Date, USACM was acting as the loan servicer for 115  
14 separate loans (the "Serviced Loans") having a combined outstanding loan balance of  
15 approximately \$960 million. See Debtors' First Amended Disclosure Statement For Debtors'  
16 Third Amended Joint Plan Of Reorganization (the "Disclosure Statement") [docket no. 1798] at  
17 24.

18           10.      According to the Debtors, there are approximately 3,600 investors (the  
19 "Direct Lenders") whose names appear as a "Lender" in the documents for one or more of the  
20 Serviced Loans. Id. Among the Direct Lenders are the FTDF and the DTDF (collectively, the  
21 "Funds").

22           11.      As of July 31, 2006, the FTDF had an interest as a Direct Lender in 47 of  
23 the Serviced Loans, and the aggregate outstanding balance owed to FTDF was \$62,653,825. Id.  
24 at 26. All of the FTDF's loans were originated and are serviced by USACM. Id.

25           12.      There are approximately 950 FTDF Members, each of whom own  
26 membership interests in the FTDF. Id. It bears emphasizing that the FTDF, not the FTDF  
27 Members, is a lender on the Serviced Loans, and its investments, not those of the FTDF  
28 Members, are secured by deeds of trust. FTDF Members are only entitled to receive

1 distributions to the extent that the profits of the FTDF exceed its losses. In other words, FTDF  
2 Members hold equity security interests in the FTDF.

3 **C. Analysis of Proofs of Claim Filed Against the FTDF**

4 13. On August 1, 2006, the FTDF Committee filed three objections to claims:  
5 (i) the Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital  
6 First Trust Deed Fund, LLC to Misfiled Claims [Docket No. 1064]; (ii) the Omnibus Objection  
7 of the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund,  
8 LLC to Claims Based on Prepetition Equity Security Interests of USA Capital First Trust Deed  
9 Fund, LLC [Docket No. 1066]; and (iii) the Objection of the Official Committee of Equity  
10 Security Holders of USA Capital First Trust Deed Fund, LLC to Proof of Claim Filed by  
11 Prospect High Income Fund, ML CBOIV (Cayman) Ltd., Pamco Cayman, Ltd., Pam Capital  
12 Funding, L.P., Highland Crusader Fund, Ltd., and PCMG Trading Partners XXIII, L.P. (the  
13 "Highland Capital Claim") [Docket No. 1068]. The two omnibus objections were sustained by  
14 orders of the Court dated September 14, 2006 [Docket Nos. 1278 and 1279]. The Highland  
15 Capital claim was later disallowed by order of the Court dated October 26, 2006 [Docket No.  
16 1674].

17 14. On December 22, 2006, the FTDF objected to three proofs of claim filed  
18 against the FTDF by the Pension Benefit Guaranty Corporation (the "PBGC") [Docket No.  
19 2254]. Subsequently, on January 25, 2007, the PBGC stipulated to withdraw its claims against  
20 the FTDF [Docket No. 2560].

21 15. On December 26, 2006, the FTDF Committee filed a claim objection to  
22 FTDF claim number 120 filed by Standard Property Development, LLC, which objection is  
23 pending. A hearing was held on this objection on January 31, 2007, at which time the objection  
24 was continued to February 15, 2007.

25 16. On December 27, 2006, the FTDF Committee filed two omnibus  
26 objections to claims: (i) the Second Omnibus Objection of the Official Committee of Equity  
27 Security Holders of USA Capital First Trust Deed Fund, LLC to Misfiled Claims [Docket No.  
28 2285]; and (ii) the Omnibus Objection Of The Official Committee Of Equity Security Holders

1 Of USA Capital First Trust Deed Fund, LLC To Claims Superseded By Compromise Contained  
2 In Debtors' Third Amended Joint Chapter 11 Plan Of Reorganization (As Modified) [Docket No.  
3 2295]. These objections were sustained by orders of the Court dated February 7, 2007 [Docket  
4 Nos. 2711 and 2709, respectively].

5           17. As of the filing of this Objection, 69 proofs of claim filed against the  
6 FTDF remain outstanding. The FTDF Committee has analyzed these proofs of claim and has  
7 determined that, with respect to the Wrong Debtor Claims, the FTDF has no liability as such  
8 claims were erroneously filed against the FTDF. Indeed, all of the Wrong Debtor Claims were  
9 filed by Claimants who are not FTDF Members, but rather who are simply Direct Lenders. A  
10 detailed listing of the Wrong Debtor Claims is attached hereto as **Exhibit "1"** and is  
11 incorporated herein by reference.

12           18. Some Claimants appear to have filed claims against all of the Debtors in  
13 the Chapter 11 Cases irrespective of whether they have any connection to a particular Debtor.  
14 As such, certain Claimants have filed Wrong Debtor Claims against the FTDF on account of an  
15 investment made through USACM even though such Claimants are not FTDF Members. For  
16 instance, Katrine Mirzaian, who is not a FTDF Member, filed proofs of claim in the amount of  
17 \$344,011.56 against all of the Debtors, including the FTDF, on account of her agreement to loan  
18 \$370,000.00 to Bay Pompano Beach, Foxhills 216 LLC, HFA-North Yonkers, and Midvale  
19 Marketplace through USACM. With respect to Claimants who filed Wrong Debtor Claims  
20 against the FTDF and who also filed claims on the same basis against USACM, the FTDF  
21 Committee requests that the Wrong Debtor Claims of such Claimants in the FTDF case be  
22 disallowed in full.

23           19. Another explanation for the number of Wrong Debtor Claims is that upon  
24 loaning money through USACM to a borrower, Direct Lenders received a sheet summarizing  
25 their investment, which sheet states in large, bold, underlined print: "First Trust Deed  
26 Investment." Claimants may not realize that making a "First Trust Deed Investment" as a Direct  
27 Lender is distinct from investing in the FTDF and becoming a FTDF Member. These Claimants  
28 appear to have filed proofs of claim only against the FTDF. With respect to such Claimants, the



FTDF Committee requests that their Wrong Debtor Claims be reclassified as without prejudice claims timely filed against USACM. This treatment was effectuated in connection with the Second Omnibus Objection of the Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC to Misfiled Claims [Docket No. 2285], with the approval of the Debtors, the Unsecured Creditors' Committee in the USACM case, and the Court.

20. In summary, the FTDF has no liability for any of the Wrong Debtor Claims, and all such claims should be disallowed or reclassified without prejudice as claims against USACM as set forth on Exhibit "1."

## II. ARGUMENT

21. Bankruptcy Code section 502 authorizes a party in interest to object to claims. See 11 U.S.C. § 502(a). Upon such objection, this Court, "after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition . . . ." 11 U.S.C. § 502(b). Although a proper proof of claim is presumed valid under Bankruptcy Rule 3001(f), once an objection controverts the presumption, the creditor has the ultimate burden of persuasion as to the validity and amount of the claim. Ashford v. Consolidated Pioneer Mortg. (In re Consolidated Pioneer Mortg.), 178 B.R. 222, 226 (9th Cir. B.A.P. 1995), aff'd, 91 F.3d 151 (9th Cir. 1996) (quoting In re Allegheny Int'l, Inc., 954 F.2d 167, 173-74 (3d Cir. 1992)).

22. The FTDF Committee has analyzed the Wrong Debtor Claims and has determined that the FTDF has no liability on account of any of the Wrong Debtor Claims. Rather, all of the Wrong Debtor Claims are based on loans to borrowers made through USACM. Accordingly, all of the Wrong Debtor Claims should be disallowed in their entirety or reclassified without prejudice as claims against USACM.

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### III. NOTICE

23. This Objection<sup>1</sup> will be served<sup>2</sup> on (i) the Claimants who filed the Wrong Debtor Claims at the addresses set forth on the claimants' respective proofs of claim, (ii) all parties on Master Service List for Limited Notice #6 Dated January 12, 2007 and (iii) all parties who have filed requests for special notice since the filing of such master service list. In light of the nature of the relief requested, the FTDF Committee submits that no other or further notice need be given.

### IV. CONCLUSION

24. For the reasons set forth herein, the FTDF Committee respectfully requests that the Court enter an order (i) sustaining the Objection; (ii) disallowing each Wrong Debtor Claim, in its entirety, as filed against the FTDF, for Claimants that also filed a proof of claim against USACM on account of the claim alleged in such Claimants' Wrong Debtor Claim; (iii) reclassifying without prejudice each Wrong Debtor Claim filed by a Claimant who did not file a proof of Claim against USACM on account of the claim alleged in such Claimant's Wrong Debtor Claim as a claim against USACM and reserving all rights of USACM to object to such claims at a later date; and (iv) granting such other and further relief as the Court deems just and proper.

RESPECTFULLY submitted this 13th day of February, 2007.

STUTMAN, TREISTER & GLATT, P.C.

/s/ Andrew M. Parlen  
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EVE H. KARASIK, and  
ANDREW M. PARLEN, Members of  
1901 Avenue of the Stars, 12th Floor  
Los Angeles, CA 90067

and

<sup>1</sup> Given the voluminous nature of the Wrong Debtor Claims and the attachments thereto and in light of the facts that the Court has access to the FTDF claims register and the Claimants already have copies or are aware of their own respective Wrong Debtor Claims, the FTDF Committee is not filing or serving copies of the Wrong Debtor Claims along with this Objection. Copies of the Wrong Debtor Claims will be provided upon request made to the FTDF Committee's undersigned counsel.

<sup>2</sup> By ECF or U.S. Mail, as appropriate.

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OF USA CAPITAL FIRST TRUST DEED  
FUND, LLC

**EXHIBIT "1"****Wrong Debtor Claims**

<b>FDTF Claim No.</b>	<b>Claimant</b>	<b>Date Signed</b>	<b>Claim Amount</b>	<b>Comments</b>	<b>Filed Claim Against USACM?</b>	<b>Proposed Disposition</b>
140	Acres Corporation, a Nevada Corporation	December 8, 2006	Blank	Claimant is not a FTDF Member nor is it otherwise connected to the FTDF. Proof of claim appears to be based on a loan that was made by the Claimant to Del Valle Capital Corporation.	No	Reclassify (without prejudice) claim as claim against USACM.
141	Acres Corporation, a Nevada Corporation	December 8, 2006	\$50,000.00	Claimant is not a FTDF Member nor is it otherwise connected to the FTDF. Proof of claim appears to be based on a loan that was made by the Claimant to Fiesta Development, Inc.	No	Reclassify (without prejudice) claim as claim against USACM.
142	Acres Corporation, a Nevada Corporation	December 8, 2006	\$50,000.00	Claimant is not a FTDF Member nor is it otherwise connected to the FTDF. Proof of claim appears to be based on a loan that was made by the Claimant to Elizabeth May Real Estate, LLC.	No	Reclassify (without prejudice) claim as claim against USACM.

<b>FDTF Claim No.</b>	<b>Claimant</b>	<b>Date Signed</b>	<b>Claim Amount</b>	<b>Comments</b>	<b>Filed Claim Against USACM?</b>	<b>Proposed Disposition</b>
143	Michael C Rehberger and Jeana L Rehberger	December 8, 2006	\$50,000.00	Claimants are not FTDF Members nor is it otherwise connected to the FTDF. Proof of claim appears to be based on a loan that was made by the Claimants to Elizabeth May Real Estate, LLC.	No	Reclassify (without prejudice) claim as claim against USACM.
144	Michael Rehberger	December 8, 2006	\$50,000.00	Claimant is not a FTDF Member nor is he otherwise connected to the FTDF. Proof of claim appears to be based on a loan that was made by the Claimant to Cornman Toltec 160, LLC	No	Reclassify (without prejudice) claim as claim against USACM.
145	Newman Trust Dated 1/26/94 c/o David R. Newman and Sandra L. Newman Trustees	December 22, 2006	\$87,339.67	Claimant is not a FTDF Members nor is it they otherwise connected to the FTDF. Proof of claim appears to be based on a loan that was made by the Claimant to Foxhill 216, LLC.	No	Reclassify (without prejudice) claim as claim against USACM.

<b>FDTF Claim No.</b>	<b>Claimant</b>	<b>Date Signed</b>	<b>Claim Amount</b>	<b>Comments</b>	<b>Filed Claim Against USACM?</b>	<b>Proposed Disposition</b>
146	Daniel R Halseth & Sandra K Halseth Trustees of the Halseth Family Trust Totally Restated 4/21/00	January 7, 2007	Unliquidated	Claimant is not a FTDF Member nor is it otherwise connected to the FTDF. Proof of claim appears to be based on loans that were made by the Claimant to Roam Development Group, Bay Pompano Beach, Gateway Stone, Del Valle – Livingston, and Palm Harbor One.	Yes	Disallow in its entirety against FTDF.
147	Katrine Mirzaian	January 9, 2007	\$344,011.56	Claimant is not a FTDF Member nor is she otherwise connected to the FTDF. Proof of claim appears to be based on loans that were made by the Claimant to Bay Pompano Beach, Foxhill 216 LLC, HFA-North Yonkers, and Midvale Marketplace.	Yes	Disallow in its entirety against FTDF.

<b>FDTF Claim No.</b>	<b>Claimant</b>	<b>Date Signed</b>	<b>Claim Amount</b>	<b>Comments</b>	<b>Filed Claim Against USACM?</b>	<b>Proposed Disposition</b>
149	First Savings Bank- Custodian for: George A. DiGioia	January 5, 2007	\$281,250.00	Claimant is not a FTDF Member nor is he otherwise connected to the FTDF. Proof of claim appears to be based on loans that were made by the Claimant to BarUSA, Placer Vineyards, and Standard Property.	No	Reclassify (without prejudice) claim as claim against USACM.